



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 20 of 2016
&
I. A. No. 13 of 2016

Dated 18.10.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Sugna Metal Limited,

1-8-673, IDA, Aazambad, Hyderabad 500 020.

... Petitioner

AND

1. Divisional Engineer, Operation, Vikarabad,
TSSPDCL, RR District.
2. Senior Accounts Officer, Operation, RR South,
TSSPDCL, Nanalnagar X Road,
Mehdipatnam, Hyderabad 500 028.
3. Superintending Engineer, Operation, RR South,
TSSPDCL, Nanalnagar X Road,
Mehdipatnam, Hyderabad 500 028.
4. Chief General Manager (Comml. & RAC),
TSSPDCL, H.No.6-1-50, Ground Floor, Corporate Office,
Mint Compound, Hyderabad 500 063.

5. Sri M.Srinivasulu, SAO, Operation, RR South,
TSSPDCL, Nanalnagar X Road,
Mehdipatnam, Hyderabad 500 028. ... Respondents

The petition came up for hearing on 21.12.2019, 18.01.2020, 28.01.2021, 18.03.2021, 02.06.2021, 15.07.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 27.12.2021, 17.01.2022 and 31.01.2022. Sri. V. Ramesh Babu, Advocate representing Sri. N. Vinesh Raj, counsel for petitioner appeared on 21.12.2021 and Sri. N. Vinesh Raj, counsel for petitioner appeared on 18.01.2020 had appeared physically. He had appeared through video conference on 28.01.2021. 18.03.2021, 19.04.2021, 02.06.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 27.12.2021, 17.01.2022 and 31.01.2022 and there is no representation for petitioner on 15.07.2021. Sri. Y. Rama Rao, standing counsel for respondents has appeared on 21.12.2019, Sri. J. Rajesh Advocate representing Sri. Y. Rama Rao, standing counsel for respondents appeared on 18.01.2020. Sri. Mohammad Bande Ali, Law Attaché for respondents have appeared 28.01.2021, 18.03.2021, 02.06.2021, 15.07.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 17.01.2022 and 31.01.2022. The proceedings of the matter has been conducted on 21.12.2019, 18.01.2020 and 20.12.2021 physically and on 28.01.2021. 18.03.2021, 19.04.2021, 02.06.2021, 15.07.2021, 15.09.2021, 28.10.2021, 15.11.2021, 02.12.2021, 27.12.2021, 17.01.2022 and 31.01.2022 through video conference. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Suguna Metals Limited (petitioner) has filed a petition under Section 146 and 151 of the Electricity Act, 2003 (Act, 2003) read with Clause 26 of the Regulation No.2 of 2015 and Clauses 2.53, 3.39 of the Regulation No.3 of 2015 in respect of non-implementation of the order of the Vidyut Ombudsman (VO) in Appeal No. 154 of 2013 dated 27.10.2014 along with order dated 04.07.2016 in C M P No. 1 of 2016 in Appeal No. 154 of 2013 including the order Consumer Grievance Redressal Forum II (CGRF-II) of Southern Power distribution Company of Telangana Limited (TSSPDCL) dated

18.01.2016 and 23.02.2016 in C G No. 323 of 2015 and 648 of 2015 respectively. The averments of the petition are extracted below:

- a. It is stated that it is a company registered under Companies Act having a HT Consumer bearing No. H. T. No. RRS 1247 with contracted maximum demand (CMD) of 9499 kVA for supply of energy and demand from the respondents.
- b. It is stated that the petitioner is aggrieved by the various violations in implementing the tariff order and regulations by the respondents the petitioner has filed various complaints before the CGRF-II and VO and the CGRF-II and VO were allowed various claims of the petitioner and it is entitled for the credit of the amounts as shown in the table which has to be paid back it as per the orders of the CGRF-II and VO. It is pertinent to note that the petitioner has already paid these amounts and has to be returned back to the petitioner.

Sl. No.	C. G. No. / Appeal No.	Date of order	Period	Amount to be refunded Rs.
1	C.G.No.1245 of 2013-14	15.02.2014	Sep-2012 to Aug-2013	51,55,308
2	Appeal 154 of 2013	27.10.2014	Sep-2012 to Aug-2013	17,90,984
3	Appeal 154 of 2013	27.10.2014	Sep-2012 to Aug-2013	5,73,202
4	C.G.No.323 of 2015	18.01.2016	Sep-2014 to Aug-2015	50,10,350
5	C.G.No.648 of 2015-16	23.02.2016		64,02,402
Total				2,09,25,068

The details of order wise amounts to be refunded are as follows.

C.G.No.1245 of 2013-14 – R&C PERIOD

Sl. No.	Billing Month	Billed amount Rs.	Date of payment	Amount paid
(1)	(2)	(3)	(4)	(5)
1	March, 2013	18766937	12.04.2013	13859393
2	April, 2013	17454067	10.05.2013 to 31.05.2013	14536649
3	June, 2013	22213377	10.07.2013 to 16.07.2013	19956894
4	August, 2013	30102314	10.10.2013 to 31.10.2013	25043578

It is stated that the amounts shown in column No. 3 are including FSA. As per orders of Hon'ble High Court the same is not paid. Amount paid

shown in Column No. 5 is including demand charges of Rs. 51,55,308/- to be refunded as per order of CGRF-II in C. G. No. 1245 of 2013-14.

APPEAL No. 154 OF 2013

Sl. No.	Billing Month	Billed amount Rs.	Date of payment	Amount paid
1	September, 2012	17266119	13.12.2012	17497264
2	October, 2012	16124269	12.11.2012 & 14.11.2012	15172777
3	February, 2013	13253263	15.03.2013 to 09.04.2013	18101421
4	May, 2013	21436459	09.06.2013 to 13.06.2013	21626764
5	July, 2013	20904399	13.08.2013 to 29.08.2013	14690357

It is stated that the amounts shown in column No.3 are including FSA. As per orders of Hon'ble High Court, the same is not paid. Amount paid shown in column No.5 are including demand charges of Rs.17,90,984/- to be refunded as per order of VO in Appeal No.154 of 2013 dated 27.10.2014.

Sl. No.	Billing Month	Billed amount Rs.	Date of payment	Amount paid
1	November, 2012	2158876	13.12.2012 to 10.01.2013	17561956
2	December, 2012	17438383	11.01.2013 & 30.01.2013	12472013
3	January, 2013	16900880	14.02.2013 to 03.03.2013	15993880

It is stated that Rs. 5,73,202/- claimed towards late payment charges from September, 2012 to August, 2013 billing months. The respondents have to refund the same as per orders of VO dated 27.10.2014 in Appeal No. 154 of 2013.

C.G.No.323 of 2015:

- c. It is stated that respondents have claimed late payment charges of Rs. 50,10,350/- excess than payable during the period from September, 2014 to August, 2015, which was paid by the appellant. As per order dated 18.01.2016 the respondents have to refund. The details month-wise billed amount and paid amount are as follows.

Sl. No.	Billing Month	Billed amount Rs.	Date of payment	Amount paid
(1)	(2)	(3)	(4)	(5)
1	September, 2014	32186594	13.10.2014 to 20.10.2014	28010656

Sl. No.	Billing Month	Billed amount Rs.	Date of payment	Amount paid
(1)	(2)	(3)	(4)	(5)
2	October, 2014	28811822	15.11.2014 to 25.11.2014	28316456
3	November, 2014	28528443	09.12.2014 to 29.12.2014	27910404
4	December, 2014	33862309	10.01.2015 to 22.01.2015	33080065
5	January, 2015	34505355	09.02.2015 to 23.02.2015	33919420
6	February, 2015	33059134	18.03.2015 to 25.03.2015	32571914
7	March, 2015	30909438	13.04.2015 to 23.04.2015	30474970
8	April, 2015	36789115	28.04.2015 to 09.06.2015	34831856
9	May, 2015	32559401	16.06.2015 to 30.06.2015	33511132
10	June, 2015	26467203	10.07.2015 to 23.07.2015	26875519
11	July, 2015	26976308	12.08.2015 to 22.08.2015	26453483
12	August, 2015	32961444	14.09.2015 to 30.09.2015	40530037
13	VS amount paid in 7/2000			2762350
Total		377616566		379248262

It is stated that the amount paid from September, 2014 to August, 2015 including excess amount paid in July, 2009 towards voltage surcharge rate is Rs. 37,92,48,262/- against the payable amount of Rs. 37,76,16,566/-, hence, an amount of Rs. 16,31,696/- is excess paid. Also to be noted that the amount paid shown in column No. 5 is including Rs. 50,10,350/-, which is to be refunded by the respondents.

C.G.No.648 of 2015-16.

- d. It is stated that the respondents on 27.01.2016 disconnected power supply without notice showing Rs. 1.92 crore as arrears which were covered by the above said orders. Under the pressure of disconnection the petitioner paid Rs. 64,02,402/- on 28.01.2016 and got restoration of power supply on 29.01.2016. Aggrieved by the action of respondents the appellant approached CGRF-II vide C. G. No. 648 of 2016. The CGRF-II set aside the claim of respondents and directed the respondents to implement the pending four orders and full shape then only can arrived correct amount. Accordingly, the respondents have to refund Rs. 64,02,402/-.

- e. The petitioner has raised the following grounds in the petition.
- i) *It is stated that as the respondents have not implemented the above said orders and paid back the amounts. The petitioner again approached the VO for implementation of the orders of the CGRF-II and Ombudsman vide CMP No.1 of 2016. The VO was pleased to direct the respondents to implement the orders of the CGRF-II and VO and also imposed the compensation of Rs.6 lakh and directed the respondents to implement all the orders immediately by order dated 04.07.2016.*
 - ii) *It is stated that the respondent No.5 who is officiating as respondent No.3 under the guise of his official position has been violating all the orders of the CGRF-II and VO and has been avoiding to implement the said orders thereby not only violated order of the CGRF-II and VO in his personal capacity but have also violated the orders as an official of the respondent 1 to 4. In this regard it is stated that the 5th respondent being the accounts officer of 1 and 2 respondents ought to have given due credit to the account of the appellant by implementing the orders of the CGRF-II and VO and instead have been indulged in vendetta against this petitioner under the guise of his official position. It is stated that the 5th respondent attended almost all the proceedings before the CGRF-II and VO and represented respondent Nos. 1 to 4. The appellant got issued a legal notice to the 5th respondent as he was violating the orders of the CGRF-II and VO.*
 - iii) *It is stated that the 5th respondent under guise of the 3rd respondent have got proposed and issued notice No.SE / OP / RRC (S) / SAO /HT / D. No. 294/ 2016 dated 17.08.2016 claiming Rs. 73,42,055/- raising a new claim which was not earlier claimed by attempting to misinterpret the order of the VO. The 5th respondent under the guise of 3rd respondent have violated the orders of the CGRF-II and the VO deliberately and wilfully and instead of giving credit of Rs. 2,09,25,068/- and returning back the said amounts to the appellant have further claimed an amount of Rs.73,42,055/- vide letter No. SE / OP / RRC (S) / SAO / HT /*

D. No. 294 / 2016 dated 17.08.2016, which is utter violation of the orders of CGRF-II and VO.

- iv) *It is stated that the 5th respondent under the guise of 3rd respondent have violated various orders of CGRF-II and VO deliberately and caused much hardship to the petitioner and caused huge financial loss, cause production loss, caused business loss not only jeopardize the petitioner but have also cause bad report to the respondent 1 to 4 and exposed respondent 1 to 4 to the present proceeding thereby cause much embarrassment to respondent 1 to 4.*
- v) *The item-wise details explained hereunder for consideration of the Commission.*

C.G.No.1245 of 2013-14:

Item No1: Demand charges normal rate:

The respondents claimed Rs. 2,00,97,059/- from September, 2012 to August, 2013 billing months towards demand charges normal rate which was in violation of R & C order issued by the then APERC. Aggrieved by the action of respondent the petitioner approached before CGRF-II stating that the demand charges normal rate payable as per R & C orders is Rs. 1,30,50,767/- hence, the petitioner claimed relief of difference of Rs. 69,46,292/-.

In this regard, the respondents deposed before CGRF-II that the demand charges normal rates for the month of March, April, June and August, 2013 billing month has been withdrawn hence the difference is only Rs. 17,90,984/- and not Rs. 69,46,292/-. Accordingly, the difference of Rs.51,55,308/- is to be withdraw for the month March, April, June and August, 2013 billing month by issuing the revised bills but the respondents did not issue revised bills as on date.

The above said deposition of the respondents was recorded by CGRF-II in its order dated 15.02.2014 in C. G. No. 1245 of 2013-14.

Regarding claim of off peak penal energy charges for November, 2012 billing month and claim of 10% demand charges the CGRF-II did not grant any relief hence, the petitioner approached the VO vide Appeal No.154 of 2013 for relief of Rs.17,90,984/- of demand charges normal rate and Rs.19,92,742/- of November, 2012. Item-wise details are discussed in the further paragraphs

Appeal No.154 of 2013.

Item No.1: Demand Charges Normal Rate:

The petitioner approached the VO for relief of Rs. 17,90,984/- claimed towards demand charges normal rate from September, 2012 to February, 2013 in violation of R&C orders issued by the then APERC that is demand charges normal rate claimed on off peak demand charges on power on day, peak demand charges on power on day and off peak demand charges on power off days on prorata basis and from March to August, 2013 billing months on RMD for entire month without prorata rate that is full tariff rate claimed.

The VO was pleased direct the respondents vide order dated 27.10.2014 to withdraw 10% demand charges of power off days and issue the revised bill duly reworking. But the respondents did not issue the revised bill as per order of VO dated 27.10.2014 till date.

Item No.2: Off Peak Penal ECH Rate.

The petitioner claimed before VO that the respondents during November, 2012 billing month taken entitlement of energy from 21.10.2012 to 06.11.2012 for 11 days and from 07.11.2012 to 21.11.2012 for 8 days and levied penal energy charges of Rs.19.92.742/- whereas the entitlement is to be considered for 9 days upto 06.11.2012 and 9 days from 07.11.2012. From 21.10.2012 to 06.11.2012 the working days are 15 and from 07.11.012 to 21.11.2012 the working days are 15 accordingly the entitlement also to be taken from 9 days in each spell.

The VO directed the respondents to rework the off peak penal consumption charges for the month of November, 2012 duly

taking 00.00 hrs as the starting period for computing the entitlements and penalties and not 6.00 hrs as was done by them. But the respondents have not done the reworking as per directions of the VO till date.

Item No.3: Late Payment Charge and Interest on ED.

The petitioner claimed before VO stating that the respondents have claimed Rs.5,73,262/- excess towards late payment charges during the period from September, 2012 to August, 2013 billing months.

The VO was pleased to directed the respondents stating that the respondents are not correct in charging delay payment charges at the rate of 1.5% on the total bill amount for the month, even when the delay less than a month. In other words, the delayed payment charges have to be levied only on the actual number of days delay that is payment of electricity bills. Accordingly, the respondents have to refund Rs. 5,73,262/- paid excess towards late payment charges from September, 2012 to August, 2013 billing months till date but not refunded.

C.G.No.323 of 2015 before CGRF-II.

The petitioner approached before CGRF-II vide C.G.No.323 of 2015 towards claim of Rs. 50.10 lakh being late payment charges during the period from September, 2014 to August, 2015. The CGRF-II was pleased to direct the respondents vide order dated 18.01.2016 that the excess claim of delay payment charges of Rs. 50,10,350/- or if any by the respondents as mentioned by the complainant may be settled by implementing the orders of Hon'ble Courts, VO, TSERC and CGRF-II in respect of cross subsidy surcharge, R&C, open access demand and voltage surcharge respectively avoiding compensation for non compliance. But the respondents have not implemented the said order till date and not refunded Rs. 50,10,350/- till date,

C.G.No.648 of 2015:

The petitioner approached before CGRF-II vide C. G. No. 648 of 2015 towards the claim of arrears of Rs. 1.92 crore as on

27.01.2016. The appellant paid Rs. 64,02,402/- on 28.01.2016 and approached before the CGRF-II to set aside the claim of Rs. 1.92 crore. The CGRF-II pleased to direct the respondents that respondents can arrive at the dues to be paid by the complainant by implementing the above four orders (that is Appeal No. 154 of 2013 of VO, C. G. No. 286 of 2015, C. G. No. 323 and Hon'ble High Court order in W. P. No. 16367 of 2015) in full shape and set aside the claim. Accordingly, the Rs. 64,02,402/- is to be refunded.

C. M. P. 1 of 2016.

The petitioner on 03.03.2016 approached before the VO vide C M P No. 1 of 2016 for implementation of order dated 27.10.2014 of Appeal No.154 of 2013. While the matter was pending before VO, the respondent No.2 issued disconnection vide letter No. SE / OP / PRC (S) / SAO / HT / D. No.1514 / 2016 dated 13.04.2016. Aggrieved by the action of respondent No.2 the petitioner approached before VO with interim application on 16.04.2016. The VO was pleased to pass stay on disconnection. The VO passed an order dated 04.07.2016. The operational part of the order is as follows:

PARA No.11:

"COMPLIANCE OF DIRECTIONS OF VIDYUT OMBUDSMAN AND OF THE HON'BLE HIGH COURT:

- a. The DISCOM cannot charge demand charges for 10% of the CMD during R & C period meant for maintenance.
- b. The respondents shall rework the off peak penal consumption charges for the month of November' 2012 duly taking 00.00 hrs as the starting period for computing the entitlement and penalties and they should revise the bills accordingly.
- c. The delay payment charges should be levied on the actual No. of days delay in payment of electricity bills."

... ..

PARA No.13: Rs. 6.00,000/- compensation is awarded.

PARA No.14:

“It is hoped that the DISCOM even at this stage complies with directions as noted in para 11 supra and pay compensation for non-compliance of orders as noted in para 13 supra without giving any excuses.”

- f. It is stated that as per directions of VO in Clause (b) above the respondent No. 2 have to rework the off peak penal consumption charges for the month of November, 2012 only duly taking 00.00 hrs as the starting period for computing the entitlement and penalties but the respondent No.2 revised the bills for entire period from September, 2012 to August, 2013 billing months by taking consumption from 00 hours as starting period which is in violation of the directions of VO order dated 04.07.2016 in C M P No. 1 of 2016 and issued notice vide letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016 for Rs. 73,42,055/-.
- g. It is stated that it is pertinent to note at this juncture the actual consumption in R&C period that is from September, 2012 to August, 2013 from 6 hrs to 6 hrs was as per directions of the respondents only as per letter No. CGM / O & M / SE (Spl) / DE / LMRC / F. No. / D. No. 312 / 12 dated 27.09.2012. Now revising the R & C Bills by taking consumption of 00 hours instead of 6 hours is also in violation of its own directions.
- h. It is stated that the respondents have not issued the R & C bills for the period from March, 2013 to August, 2013 billing months till date as per R & C orders and claiming normal bill with full demand charges which is in violation of R & C orders and directions of VO.
- i. It is stated that the respondents are liable for fine of Rs. 1,00,000/- as on 02.02.2016 and Rs. 6,000/- per day from 03.02.2016 till the date of implementation for non-implementation of order 18.01.2016 of C. G. No. 323 of 2015 of CGRF-II.
- j. It is further stated that the respondents are liable for fine of Rs.1,00,000/- as on 16.03.2016 and Rs.6,000/- per day from 17.03.2016 till the date of

implementation for non-implementation of order dated 23.02.2016 of C. G. No. 648 of 2015-16 of CGRF-II.

- k. It is further stated that the respondents are liable for fine of Rs. 1,00,000/- as on 04.07.2016 and Rs. 6,000/- per day from 05.07.2016 till the date of implementation for non-implementation of order dated 04.07.2016 of C M P No. 1 of 2016 of VO.

2. The petitioner has sought the following prayer in the petition.

- “a. To set aside the claim of Rs.1.40 crore made vide letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016.*
- b. To direct respondents to pay fine of an amount of Rs. 1,00,000/- as on 02.02.2016 and Rs. 6,000/- per day from 03.02.2016 till the date of implementation for non-implementation of order dated 18.01.2016 of C. G. No. 323 of 2015,*
- c. To direct respondents to pay fine of Rs. 1,00,000/- as on 16.03.2016 and Rs.6,000/- per day from 17.03.2016 of C. G. No. 648 of 2015-16.*
- d. To direct respondents to pay fine of Rs. 1,00,000/- as on 04.07.2016 and Rs. 6,000/- per day from 05.07.2016 till the date of implementation for non-implementation of order dated 04.07.2016 of C M P No. 1 of 2016 immediately,*
- e. To direct respondents to comply the order dated 04.07.2016 passed in C M P No. 1 of 2016 immediately,*
- f. To direct respondents to refund Rs. 2,09,25,068/- as per orders in Appeal No. 154 of 2013 order dated 27.10.2014, C. G. No. 323 of 2015 order dated 18.01.2016 and C. G. No.648 of 2015-16 dated 23.02.2016,*
- g. To prosecute 5th respondent for violating the orders of CGRF-II in C. G. No. 323 of 2015 dated 18.01.2016, C. G. No. 648 of 2015 dated 23.02.2016 and VO in Appeal No. 154 of 2013 dated 27.10.2014 and C M P No. 1 of 2016 dated 04.07.2016.”*

3. The petitioner has also filed an Interlocutory Application (IA) under Section 94 (2) of the Act, 2003. The petitioner / applicant has sought the following relief in the application:

“Directing the respondents not to disconnect power supply to the H T. No. RRS 1247 of appellant pending final decision by the Commission in the main appeal.”

4. The petitioner has filed written submissions and the same is extracted below:
- a. It is stated that the then APERC vide its proceeding No. APERC / Secy / 16 / 2012-13 dated 01.11.2012 revised order on R & C measures and directed the respondents to implement the said order with effect from 00.00 hours on 07.11.2012. However, the CGM (O&M) / SE (Spl) / DE / LMRC / F. No. / D. No. 312 / 12 dated 27.09.2012 directed the appellant to follow timing from 6 AM to 6 AM instead of 00.00 hours as directed by the then APERC.
 - b. It is stated that the respondent No. 3 during November. 2012 billing month while computing the entitlement from 23.10.2012 to 6.11.2012 (15 days) taken entitlement of 11 days and from 07.11.2012 to 23.11.2012 (16 days) taken entitlement of 8 days due to which the R&C penalty of Rs. 19,92,742/- was imposed. Aggrieved by the wrong calculation of respondent No. 3 the appellant approached before CGRF-II vide C. G. No. 1245 of 2013-14. But the CGRF-II not considered the same. Hence, the appellant approached before V.O. vide Appeal No. 154 of 2013. V.O. allowed the appeal and directed the respondent No. 3 to compute the entitlement of 2nd spell of November, 2012 that is from 07.11.2012 to 23.11.2012 by taking 00.00 hours as starting period for computing the entitlement and penalties and they should revise the bills accordingly duly observing the direction of the then APERC in the said revised R&C order but not by taking 6 hours as was done by the respondent No.3. However the relevant portion of direction of V.O. is as follows.

"30(c) The respondents will have to rework the off peak penal consumption charges for the month of November, 2012 duly taking 00.00 hrs as the starting period for computing the entitlement and penalties and not 06.00 hrs as was done by them. If this results in revision of bills for the subsequent periods, it shall be carried out accordingly. "
 - c. It is stated that hence, the revision of bill is restricted to November, 2012 billing month only. But, the respondent No. 3 vide letter No. SE / OP /

RRC (S) / AO / HT/ D. No. 2941 / 2016 dated 17.08.2016 increased huge R & C penalties and claimed an amount of Rs. 73,42,055/- by revising the bills from September, 2012 to August, 2013 by taking consumption of 00 hours to 00 hours which is against the above directions of V.O. It is pertinent to note at this juncture that as per actual consumption of 6 hours to 6 hours the respondent No.3 imposed off peak penal charges of Rs. 19,92,742/- in November, 2012 billing month. For this correction only an Appeal No.154 of 2013 was filed before V.O. The V.O. after elaborate discussion allowed the appeal filed by appellant which is categorically admitted by respondent No.3 in its counter filed in June, 2017.

- d. It is stated that as per directions of V.O. the respondent No.3 ought to have first compute the entitlement of November, 2012 billing month by taking 00 hours as starting period for 15 days and 16 days for each spell but the respondent No.3 has not done the correction in entitlement and other way harassing the appellant by one or other way. Now in August, 2016 the respondent No. 3 vide its letter SE /OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016 raised the R & C penalties of Rs. 73,42,055/- whereas the off peak penal energy charges were Rs. 19,92,472/- when the initially bills issued in relevant billing months. Still this mistake in computation of entitlement is not rectified by the respondent No. 3 till date. Instead of making correction of mistake occurred in November, 2012 bill the respondent No. 3 is issuing the wrong bills of R & C period with wrong interpretations intentionally. This fact is also clearly established that the respondent No.3 always trying to harass to the appellant by one way or other.
- e. It is stated that it is pertinent to note that the direction of respondents to follow power consumption timing from 6 hours to 6 hours instead of 00 hours to 00 hours is in violation of R&C order dated 01.11.2012 and again imposition of present penalties of Rs. 73,42,055/- further period from September, 2012 to August, 2013 is against the actual penalty of Rs. 19,92,472/- by taking consumption of 00 hours to 00 hours instead of actual consumption of 6 hours to 6 hours is in violation of their own

- direction dated 27.09.2012. For other HT consumer the respondent raised the R & C bills as per actual consumption of 6.00 hrs to 6.00 hrs.
- f. It is stated that the CGRF-II vide its order dated 18.01.2016 of C. G. No. 323 of 2015 directed the respondents to withdraw Rs. 50,10,350/- pertaining to excess claim of delay payment surcharge but the respondents not withdrawn and not implemented the said orders of the CGRF-II till date.
- g. It is stated that the respondent No. 3 has claimed an amount of Rs. 1,92,07,202/- as on 27.01.2016 without furnishing any details and without implementing all pending CGRF-II orders for which the appellant approached before CGRF-II vide C. G. No. 648 / 2015-16. The CGRF-II vide its order dated 23.02.2016 observed that the claim of Rs. 1,92,07,202/- by respondent No. 3 as on 27.01.2016 is not correct and not submitted any clarity in arriving the dues and without implementation of all pending orders in full shape hence directed to implement all the pending orders before arriving due amount. This order also not implemented by the respondents till date.
- h. It is stated that the then APERC was pleased to pass an order restricting the power consumption to the HT consumers on the request of respondent as the respondent was in energy deficit situation during the period from September, 2012 to August, 2013. The then APERC vide proceeding No. APERC / Secy / 16 / 2012-13 dated 01.11.2012 passed an amendment to its earlier orders with effect from to 31.03.2013 effective from 00.00 of 07.11.2012.
- i. It is stated that as per Clause No.19(a) of proceeding No. APERC / Secy / 16 / 2012-13 dated 01.11.2012 the respondent ought to claim the demand charges proportionate to their supply.
- j. It is stated that the respondents in violation of said provision claimed the demand charges at full rate that is Rs. 250/- per kVA up to March, 2013 and Rs. 350/- per kVA from April, 2013 onwards particularly in March, 2013, April, 2013, June to August, 2013 months. In view of the discrepancy in demand charges claim the petitioner approached before the CGRF-II vide C. G. No. 1245 of 2013-14 / Ranga Reddy South Circle. It is pertinent to note at this juncture that the respondent during hearing

held before the CGRF-II deposed that the respondent have already withdrawn the demand charges for March, April, June and August, 2013 and submitted a letter to this effect to the appellant. But, the respondent had neither given letter to the appellant nor withdrawn the demand charges till date. The CGRF-II recorded the said deposition in its order dated 15.02.2014.

- k. It is stated that the fact is that the respondents have not withdrawn the said demand charges and on other hand issued notice again and again by raising penalties under one or other pretext and harassed the appellant. In the present / latest claim made vide letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016 issued by respondent No. 3 deliberately violated the Clause 19(a) of proceeding No. APERC / Secy / 16 / 2012-13 dated 01.11.2012 and claimed the demand charges at full rate in March, April, June to August, 2013 months. The detail working of excess demand charged claim by respondent No. 3 vide its letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016 violating R&C proceeding of the then APERC and their own deposition given before the CGRF-II is furnished hereunder for ready reference which is clearly established the intention of respondent No.3 to harass to the appellant under one or other pretext.

Billing Month	RMD kVA	Rate per kVA claimed by respondent No. 3 Rs.	Amount claimed of demand charges Rs.	Rate per kVA to be claimed by respondent No. 3 as per R & C proceeding for demand charge Rs.	Amount payable of demand charges Rs.	Difference excess demand charges claimed Rs.
(1)	(2)	(3)	(4) (2x3)	(5)	(6) (2x5)	(7) (4-6)
March, 2013	8436	250	21090000	145.16	1224570	884430
April, 2013	1577.70 4176.30	250 350	394425 1415301	55.56 116.67	87657 487249	306768 928052
June, 2013	9420	350	3297000	272.22	2564312	732688
July, 2013	9354	350	3273900	291.67	2728281	545619
Aug, 2013 up to	2573	350	3284400	95.97	246931	1307271

Billing Month	RMD kVA	Rate per kVA claimed by respondent No. 3 Rs.	Amount claimed of demand charges Rs.	Rate per kVA to be claimed by respondent No. 3 as per R & C proceeding for demand charge Rs.	Amount payable of demand charges Rs.	Difference excess demand charges claimed Rs.
31.08.2013	6811	350		254.03	1730198	
Total						4704828

i. It is stated that the respondent No. 3 has claimed Rs. 47,04,828/- towards demand charges during R & C period in violation of R & C proceeding issued by the then APERC deliberately and contrary to its own deposition filed before the CGRF-II during the hearing of C. G. No. 1245 / 2013-14 / Ranga Reddy South Circle, which is clearly established the intention of respondents to harass to the appellant.

m. It is stated that the respondents have not implemented any order issued by CGRF-II till date, have not filed any evidence of implementation of orders before this Commission and also not filed compliance report before the CGRF-II for any order till date even though, it is prescribed in Regulation No. 3 of 2015 passed by this Commission.

5. The respondent Nos. 1 to 5 have filed their counter affidavit in I. A. No. 13 of 2016 in O. P. No. 20 of 2016 and the contents of it are as below:

a. It is stated that the main and material allegations made in the O. P., which are not specifically admitted hereunder shall be deemed to have been denied and the petitioner is put to strict proof thereof.

b. It is stated that it is denied that there is any violation in implementing the tariff order and the regulations issued by this Commission. It is true that the petitioner has filed various complaints before the CGRF-II and the V.O., but on erroneous presumptions and assumptions. It is stated that the petitioner has first approached the CGRF-II vide C. G. No. 1245 of 2013-14 regarding their grievance against TSSPDCL in regard to R & C billing, levying of late payment charges and waiving of 50% R & C penalties. The respondents have filed written submissions before the

CGRF-II, vehemently denying the allegations of the petitioner. Ultimately, after elaborate enquiry, the CGRF-II has rejected the claims and grievances of the petitioner and thereby dismissed the said C.G. by order dated 15.02.2014. The CGRF-II, while passing the order observed that the respondents have levied the above charges as per the then APERC R&C guidelines only for the R&C period which are in order and the complainants have calculated the above charges in a wrong method with imaginary figures. Aggrieved by the said order of rejection, the petitioner preferred appeal before V.O. vide Appeal No.154 of 2013. After elaborate hearing, V.O. allowed the appeal filed by the petitioner herein by order dated 04.07.2016 and the respondents have implemented the orders insofar as the said order is within the R & C guidelines issued by this Commission. Thereafter, the petitioner approached the Hon'ble High Court in W. P. No. 16367 of 2015 seeking to direct the respondents to implement the orders of the VO in all respects and to penalise the respondents for not fully implementing the order of the V.O. The Hon'ble High Court disposed off the said writ petition with a direction to the respondents to implement the orders of the V.O in all respects. In the meantime, the petitioner filed a petition before V.O. questioning the inaction on the part of the respondents in not implementing the order of V.O. and seeking to penalise the respondents for the inaction on their part. It is stated that V.O. has imposed penalties to the tune of Rs. 6,00,000/- on the respondents.

- c. It is stated that in the said circumstances, these authorities have reworked the R & C bills as per the orders of V.O. As per the rework sheet, the petitioner has to pay Rs. 73,42,055/- to the respondents towards R & C bills after withdrawing the 10% demand charges as directed by V.O. It is stated that after adjusting the penalties of Rs. 6,00,000/- imposed by V.O., the petitioner is liable to pay Rs. 67,42,055/- to the respondents. This respondent has informed the petitioner about the final payment to be made by it, vide letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016 of the respondent, but the petitioner failed to pay the said amount and is filing one petition or the other which amounts to nothing short of forum shopping.

- d. It is stated that the respondents have implemented the orders of CGRF-II and V.O. in letter and spirit and there remains nothing to be implemented. It is denied that the 5th respondent officiating as the 2nd respondent is avoiding to implement the orders of the CGRF-II and V.O. It is stated that the petitioner is misleading this Commission by again and again repeating the same allegations without there being any truth in it. It is stated that the respondents have reworked the R&C bills and after making all adjustments and entries, the final figure arrived at and to be paid by the petitioner was informed to the petitioner by this respondent vide letter dated 17.08.2016. It is denied that the respondents have misinterpreted the orders of the CGRF-II and V.O. It is denied that an amount of Rs. 2,09,25,068/- has to be given credit to the account of the petitioner. By no stretch of imagination, the petitioner is entitled for such huge amount which might have been perhaps arrived at by the petitioner by imagination. The petitioner has filed writ petition in W. P. No. 7334 of 2016 on the file of the Hon'ble High Court, which is pending adjudication and the claim of the petitioner is subject to the outcome of the said writ petition.
- e. It is stated that viewed from any angle, there are no merits or bonafides in the present O. P. and therefore, the same is liable to be dismissed inlimine.

6. The Commission heard the counsel for petitioner and the representative of the licensee on several dates as mentioned in the preamble. The parties have made detailed submissions, which are briefly extracted below.

Record of proceedings dated 21.12.2019:

"... .. The counsel for the respondents stated that the respondents have approached the Hon'ble High Court and the matter is pending consideration. The counsel for the petitioner stated that the matter is relating to implementation of order of the CGRF and he would ascertain the latest position and place it before the Commission on the next date of hearing. Accordingly adjourned."

Record of proceedings dated 18.01.2021:

"... .. The counsel for the petitioner stated that the matter is relating to implementation of order of the CGRF and he also stated the Hon'ble High Court, upon questioning the action of the DISCOM in continuing to deviate from

the orders of the CGRF, directed them to follow the regulations and raise claims towards bills. He also sought time to make detailed submission on the next date of hearing. However, the counsel representing the respondents sought time stating that the standing counsel is out of station. The Commission observed that as the proceedings between the parties is pending before the Hon'ble High Court, the Commission is not inclined to proceed with the matter. Accordingly adjourned."

Record of proceedings dated 28.01.2021:

"... ... The counsel for the petitioner stated that the matter involves the implementation of the order of the Ombudsman. However, he requested for a clear date to argue the matter. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 18.03.2021:

"... ... The counsel for petitioner sought time to make submissions. The Commission pointed out and sought to ascertain the status of the matter pending before the Hon'ble High Court. The counsel for petitioner stated that he would ascertain the status of the matter and submit the same on the next date of hearing. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 02.06.2021:

"... ... The counsel for the petitioner sought further time to make submissions in the matter by stating that the respondents have approached the Hon'ble High Court in the matter. The representative of the respondent stated that the matter is pending before the Hon'ble High Court. The counsel for the petitioner stated that due to the pandemic situation he is not able to establish contact with the party and they are unable to come for discussion. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 15.07.2021:

"... ... The representative of the respondents stated that the petitioner has been seeking adjournments time and again without arguing the matter as it happened on three occasions. Due to non-prosecution, the matter is adjourned."

Record of proceedings dated 15.09.2021:

"... ... The counsel for petitioner stated that the file has been misplaced in the office and as such short time may be given for arguing the matter. The

representative of the respondents stated that the matter was adjourned earlier. Having considered the request of the counsel for petitioner, the matter is adjourned on the condition that the matter will be reserved for order in the absence of any submissions on the next date of hearing.”

Record of proceedings dated 28.10.2021:

“... .. The counsel for petitioner stated that he is ready to argue the matter. However, the representative of the respondents stated that the petitioner has approached the Hon’ble High Court on the very same issue and unless, he withdraws the writ petition pending before the Hon’ble High Court, this matter cannot be proceeded with. The counsel for petitioner sought time to obtain instructions from the petitioner and report in the matter. The Commission made it clear as the matter is an old matter, it would like to close the hearing immediately, however, for the present, adjournment is granted to obtain instructions in the matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 15.11.2021:

“... .. The counsel for petitioner stated that Managing Director of the company is out of country and as such a short date may be given for taking instructions from him and report about the continuation of the matter. However, the representative of the respondents stated that the petitioner has approached the Hon’ble High Court on the very same issue. The counsel for petitioner sought time to obtain instructions from the petitioner invariably by the next date of hearing. The Commission is not inclined to grant adjournment as the matter is an old matter. However, the counsel for petitioner persisted with the request, as such the matter is adjourned on payment of cost of Rs.2,000/-, the details of which will be provided by the office of the Commission. Accordingly, the matter is adjourned finally.”

Record of proceedings dated 20.12.2021:

“... .. The counsel for petitioner stated that the petitioner is inclined to submit arguments in the matter only upon withdrawing the writ petition for which purpose the matter may be adjourned. The Commission made it clear that the matter being an old case, it is not inclined to grant any longer time and as such the matter is scheduled for hearing in one week. On the said date the matter has to be argued in any case, as otherwise, the matter will be treated as heard and reserved for orders. The representative of the licensee has stated that the

petitioner has taken sufficient time. However, the counsel for petitioner persisted with the request, as such the matter is adjourned finally.”

Record of proceedings dated 27.12.2021:

“... .. The counsel for petitioner stated that he has filed a memo before the Hon’ble High Court seeking to withdraw the writ petition filed by the petitioner and it is yet to be taken on record. The Commission pointed out that the same may be placed before it for proceeding further in the matter. The counsel for petitioner has agreed to file a memo before the Commission bringing forth the memo filed before the Hon’ble High Court. Accordingly, the matter is adjourned.”

Record of proceedings dated 17.01.2022:

“... .. The counsel for petitioner stated that he will submit arguments on another date. The representative of the licensee has stated that the matter has underwent several adjournments, the counsel for petitioner may argue the matter today and if required, the Commission may consider the adjournment. In view of the submission of the counsel for petitioner that he needs time for submitting the arguments, the matter is adjourned.”

Record of proceedings dated 31.01.2022:

“... .. The counsel for petitioner stated that the respondents have not filed any counter affidavit in respect of the original petition, however, they have replied to the interlocutory application pending consideration before the Commission. The main issue required to be considered is with regard to calculation of demand charges. The issue was originally agitated before the CGRF and subsequently before the Ombudsman. The calculations towards PDL and PCL for the month of November, 2012 had been substantially settled by the Ombudsman and confirmed by the Hon’ble High Court.

Originally the then Commission had imposed restriction and control measures in October, 2012 to be valid up to March, 2013. While imposing the same, the Commission had considered off peak hours as 6.00 AM to 6.00 PM and 2200 hours to 6 hours on the next day. However, in its proceedings dated 01.11.2012, the Commission had modified the period of calculation to start with 0.00 hours and apportioning the off peak and peak hours respectively. The said period was to be applicable from 07.11.2012. Dispute has been raised as to the

calculation of applying the consumption from 0.00 hours and not 6 hours as was valid earlier upto the month of November, 2012.

The CGRF as well as the Ombudsman had specifically ordered for recalculation of the charges keeping in mind the orders of the Commission. When the petitioner approached the Hon'ble High Court for implementation of the order of the Ombudsman, even the Hon'ble High Court directed the licensee to give effect to the directions of the Ombudsman by rectifying the calculations. Despite such directions by the Hon'ble High Court, no action came forth from the licensee. Therefore, in order to ensure, the petitioner had again approached the Hon'ble High Court insofar as recalculations, disconnection and compliance of the order of the Ombudsman. The present petition, therefore, is limited to punishing the licensee for not giving effect to the order of the Ombudsman as confirmed by the Hon'ble High Court.

The counsel for petitioner extensively dealt with the calculations, which are part of the record, as regards the calculations for the demand and energy during the operation of R&C measures including application of the timelines for calculating the same. The action of the licensee appears to be detrimental to the consumer as they have continued to apply the timelines applicable to the petitioner prior to 01.11.2012 after 07.11.2012 also. By adopting different timelines, the licensee is seeking to recover the penalty for violating the R&C measures, which is neither appropriate nor is in terms of the order of the Commission read with orders of the Ombudsman and Hon'ble High Court.

The counsel for petitioner endeavour to explain the rational of providing peak and off peak quantities of power as also the period for which such quantities can be availed in terms of number of working days in a month. The petitioner seeks to punish the licensee for violating the orders of the Commission.

The representative of the respondents endeavoured to submit that the CGRF and the Ombudsman had given substantial relief and the same had been confirmed by the Hon'ble High Court. The licensee acted in accordance with the directions of the Hon'ble High Court only. The licensee submits that the petitioner is pursuing both the remedies. The communication made by the licensee pursuant to earlier round of directions of the Hon'ble High Court, is clear and there is no error in the decision of the licensee in giving effect to the order of the Ombudsman. The petitioner was not estopped from making

representation and getting the billing settled in terms of the orders of the Ombudsman. The licensee has clearly identified the amounts and made proper claims towards demand and energy charges in terms of the orders of the Commission.

The counsel for petitioner stated that the order of the Ombudsman is very clear and the same had not been adhered to completely.”

7. The petitioner has filed written submissions consequent upon hearing of the matter. The contents thereof are extracted below:

- a. It is stated that the present petition is filed against the respondents for non-implementation of orders of CGRF-II and V.O.:
 - i. C.G.No.323/2015 dated 18.01.2016;
 - ii. C.G.No.648/2015 and Appeal No. 154 / 2013 as also C. M. P. No. 1 / 2016 of V.O.;
 - iii. C.G.No.1245/2013;
- b. It is stated that the respondents have not implemented orders of CGRF-II, nor any explanation is given for non-implementation of the said orders in the present case. Hence, the respondents are liable to implement the said orders along with compensation till the implementation of the said orders.
- c. It is stated that regarding orders in Appeal No. 154 / 2013 and C. M. P. No. 1 / 2016 by V.O., the respondents attempted to mislead by misinterpreting the orders of V.O. in Appeal No. 154 / 2013. In this regard it is stated that originally the petitioner has filed a case for challenging the penalty imposed by the respondents against the revised orders of the Commission for R &C dated 01.11.2012.
- d. It is stated that during the month of Nov, 2012 off peak penal energy charges were levied against the petitioner for Rs. 19,92,742/-. The petitioner has challenged the said off peak penal charges before the CGRF-II and the same was dismissed, consequently approached V.O. in Appeal No. 154 / 2013. The V.O. after considering the merits had held that levying of the off peak penal charges by taking 06:00 AM to 06:00 AM is not correct and the respondents ought to have taken from 00.00 hours as per the R & C orders. The V.O. while holding that the action of

the respondents is not correct has observed that while revising the said entitlement of penalties and for subsequent month the respondents shall carry out the revision. The said observation is only for the entitlement and calculations for off peak penal charges. It is pertinent to note that the R & C orders were issued on 01.11.2012 and at Clause 7 held that the R & C will be effective from 00.00 hours on 07.11.2012, the order of V.O. is only to correct the said anomaly and not to revise the total bills for R & C period. It is stated that the respondents themselves have violated the orders of the Commission dated 01.11.2012 and have provided the R&C timings from 06.00 am and not from 00.00 Hours, thereby the respondent themselves have violated the orders of the Commission and implementing the timings as 06.00 AM to all the consumers in the State in utter violation of R & C orders of the Commission.

- e. It is stated that deliberately misinterpreting the orders of V.O. the respondents have revised the total bills of the petitioner in isolation taking R & C timing as 06.00 hrs and claimed additional amounts of Rs. 67,42,055/- in the guise of implementing the orders of V.O. in Appeal No. 154 / 2013. In this regard it is stated that prima facie the respondents themselves have violated the R&C orders of this Commission and supply the power with effect from 06.00 AM to whole of the State and have been billing the monthly bills, accordingly all the consumers in the State were forced by the respondents to avail the R & C from 06.00 AM. All the consumers have been availing the R & C measures including the petitioner as per the timings provided by the respondents.
- f. It is stated that the respondents having unilaterally and arbitrarily implemented the R & C orders from 06.00 am instead of 00.00 hours in violation of the orders of the Commission cannot take advantage of their own wrong that too singling out the petitioner only because the petitioner has obtaining a favourable judicial order and victimize the petitioner for pursuing the legitimate right in the judicial process.
- g. It is stated that the respondents with malafide intentions have mischievously miscalculated erroneously interpreting the observation of V.O.'s order only to circumvent the present proceedings. It is pertinent

to note that the respondent has not produced the said mischievous calculation of Rs. 67,42,055/- before the present proceeding.

- h. It is stated that the respondent attempting to take advantage of their dominating monopoly position in disregard to the orders of V.O.'s order calculated revised bills claiming Rs. 67,42,055/- even the said calculation is in utter violation of the orders of the Commission's R&C orders. It is to be noted that as per clause 19 (a) of R & C orders which reads as follows:

"19. Specific conditions/provisions:

- (a) *The billing Demand shall be the maximum demand during the month and clause 213.6 (6) of Tariff Order shall not apply during these R&C measures. For consumers who opt for 18 days power supply, the demand charges shall be billed on pro-rata rate basis i.e., at the rate of 18 / 30 of the prescribed rate.*
- (b) *No deemed consumption charges shall be billed during restriction and control period for HT-I(b) category."*

- i. It is stated that the respondents have taken demand rate as tariff order whereas as per R & C order the respondents ought to have calculated at proportionate rate of 18 / 30 on perusal of the calculation in annexure– A submitted by the respondent it is clearly evident that the respondent with oblique motive in colorable exercise of power dishonestly made claim under the guise of V.O. orders issued revised bills bloating the claim exorbitantly only to circumvent the implementation of orders of V.O. which amounts to further violations of the said order.
- j. It is stated that in fact even as per the revised bills as shown in Annexure- A the respondent are liable to pay as shown therein. Hence, either way the respondents are liable to pay to the petitioner instead of demanding a payment from the petitioner.
- k. It is stated that the respondents have implemented R & C timing from 06:00 AM cannot be allowed to blow hot and cold. The respondents have made all the consumers to avail R & C timing from 06:00 AM and even penalized in violations and are estopped from going back and take

advantage of their own wrongs. The respondents cannot be allowed to misinterpret the orders of statutory authority.

I. It is stated that the petitioner is relying on the judgments annexed to the written submission, viz.:

- i) Syed Fazal Mohammad Vs. State through Principal Secy Finance Deptt Lko & Ors reported in Laws ALL 2018 (8) 98.
- ii) Shree Narayana Mahto Vs. The State of Bihar & Ors, reported in 2015 Supreme (Patna) 703 2015 3BBCJ 97
- iii) M. A. Joy S/o Mathew Vs. Sub Registrar, Edappally, reported in 2021 Supreme (Kerala) 787.
- iv) Hindustan Composites Ltd. Vs. Jasbir Singh Randhawa and another reported in 2002 Supreme (Bombay) 326.
- v) M. Hussain and Etc. Vs. Bharathiyar University, Coimbatore & Others reported in 1990 Supreme (Mad) 298.
- vi) Laxmi Narayan Verma Vs. South Eastern Coalfield Ltd & Ors reported in Laws 2016 (CHH) 2016 (1) 8.
- vii) Dinesh Arora Vs. Vibhore Kapoor And Anr. Reported in Laws (Raj) 2018 7 23.
- viii) Asiad Village Society Vs. Anil Kumar reported in Laws (DLH) 2002 (12) 65.
- ix) Haryana Financial Corporation Vs. Jagdamba Oil Mills reported in Laws (SC) 2002 (1) 110.
- x) Babubhai I Bhill Vs. Chief Postmaster General reported in Laws (GJH) 2013 (7) 65.

8. The respondent has also filed written submissions subsequent to the hearing. The submissions on behalf of the respondents are as below:

a. It is stated that the petitioner filed the above O. P., praying the Commission:

- i) *to set aside the claim of Rs.1.40 crore made through Letter No. SE / OP / RRC (S) / SAO / HT / D. No. 294 / 2016 dated 17.08.2016;*
- ii) *to direct the respondents to pay fine of Rs. 1 Lakh as on 02.02.2016 and Rs. 6000/- per day from 03.02.2016 till the date*

of implementation of the order dated 18.01.2016 in C. G. No. 323 of 2015;

- iii) to direct the respondents to pay fine of Rs. 1 Lakh as on 16.03.2016 and Rs. 6000/- per day from 17.03.2016 till the date of implementation of the order dated 23.02.2016 in C. G. No. 648 of 2015-16;*
- iv) to direct the respondents to pay fine of Rs. 1 Lakh as on 04.07.2016 and Rs. 6000/- per day from 05.07.2016 till the date of implementation of the order dated 04.07.2016 in C. M. P. No. 01 of 2016;*
- v) to direct respondents to comply the order dated 04.07.2016 in C. M. P. No. 01 of 2016 immediately;*
- vi) to direct respondents to refund Rs. 2,09,25,068/- as per orders in Appeal No. 154 of 2013 dated 27.10.2014, C. G. No. 323 of 2015 dated 18.01.2016 and C. G. No. 648 of 2015-2016 dated 23.02.2016; and*
- vii) to prosecute 5th respondent for violating the order of CGRF-II in C. G. No. 323 of 2015 dated 18.01.2016, C. G. No. 648 of 2015 dated 23.02.2016 and V.O. in Appeal No. 154 of 2013 dated 27.10.2014 and C. M. P. No. 01 of 2016 dated 04.07.2016.*

- b. It is stated that the petitioner filed several complaints before CGRF-II and V.O. on erroneous presumptions and assumptions.
- c. It is stated that petitioner originally filed C. G. No. 1245 of 2013-14 contending that they have been charged excess R & C bills and penalties during the period of September 2012 to August 2013 and also contending that there are discrepancies in the bills raised by the respondents on four counts that is (a) demand charges normal rates. (b) off-peak penal energy charges (c) late payment charges and (d) 50% waiver of R & C penalties.
- d. It is stated that CGRF-II dismissed the complaint in C. G. No. 1245 of 2013-14 by order dated 15.02.2014.
- e. It is stated that the petitioner filed Appeal No. 154 of 2013 before V.O. and the same was partly allowed. The operative portion of the order at para 30 reads as follows:

- “i. The respondent shall rework the bills of the appellants and not levy demand charges on the appellants for the 12 day period when they were not availing power. In other words, the DISCOM cannot charge demand charges for the meagre 10% demand that was allowed to the appellants during the power holiday period, as doing so contravenes the directions of the Hon’ble Commission.*
- ii. The appellants’ contention about demand charges at penal rate for the month of September, 2012 and October, 2012 is negated as the charges levied by the DISCOM are found to be in accordance with the directives of the Commission.*
- iii. The respondents will have to rework the off-peak penal consumption charges for the month of November 2012 duly taking 00.00 hrs as the starting period of for computing the entitlement and penalties and not 06.00 hrs as was done by them. If this results in revision of bills for the subsequent periods, it shall be carried out accordingly.*
- iv. The respondents are not correct in charging delayed payment charges at the rate of 1.5% on the total bill amount for the month, even when the delay is less than a month. In other words, the delayed payment charges have to be levied only on the actual number of days delay that is there in payment of a electricity bill.*
- v. The R & C penalties that are reworked because of this judgment will also impact the 50% waiver of R & C penalties that is already done by the respondents. The 50% waiver shall accordingly be adjusted to take into account the reworked R & C penalties that is now ordered.”*
- f. It is stated that the respondents implemented the order in Appeal No. 154 of 2013 insofar as the said order was within the R & C guidelines issued by the Commission.
- g. It is stated that the petitioner then filed W. P. No. 16367 of 2015 alleging that the respondents did not implement the order of V.O. in spite of

several representations. The Hon'ble High Court by order dated 07.07.2015 disposed of W.P. directing the respondents to implement the order of Appeal No. 154 of 2013.

- h. It is stated that the petitioner then filed petition before V.O. in C. M. P. No. 01 of 2016 questioning the in action of petitioner in not implementing the order of V.O.
- i. It is stated that V.O. by order dated 04.07.2016 while imposing penalty of Rs. 6,00,000/- for non-compliance of order as noted in para 13 of its order directed the respondents to comply the directions in para 11 of the said order. For convenience para 11 is extracted below:

“The Respondents shall implement the orders relating to 3 items a,c & d of para 30 of the Orders in Appeal No.154 / 2013 (also noted in this para as a to c) and shall also pay compensation for non-compliance of the valid orders of V.O. as well as mandate of the Hon'ble High Court.

COMPLIANCE OF DIRECTIONS OF VIDYUTH OMBUDSMAN AND OF THE HON'BLE HIGH COURT:-

- a. *The DISCOM cannot charge demand charges for 10% of the CMD during R&C period meant for maintenance.*
- b. *The Respondents shall rework the off peak penal consumption chargers for the month of November, 2012 duly taking 00.00 hrs as starting period for computing the entitlements and penalties and they should revise the bills accordingly.*
- c. *The delay payment charges should be levied on the actual No. of the day delay in payment of electricity bills.”*
- j. It is stated that the respondents pursuant to the order of Hon'ble High Court and the order of V.O. in Appeal No. 154 of 2013 {para 30 (c)} and para 11 of the order in C. M. P. No. 01 of 2016 reworked the R & C bills.
- k. It is stated that as per the rework sheet submitted as annexure to the counter, petitioner has to pay Rs. 73,42,055/- towards R & C bills after withdrawing 10% demand charges as directed by V.O. The respondents

have to pay an amount of Rs. 6,00,000/- towards penalty imposed by V.O. in C. M. P. No. 01 of 2016 dated 04.07.2016 as per orders. After deducting the amount of Rs. 6,00,000/- from Rs.73,42,055/-, petitioner has to pay Rs. 67,42,055/-.

- l. It is stated that hence notice dated 17.08.2016 was issued demanding payment of Rs. 67,42,055/-.
- m. It is stated that the CGRF-II in C. G. No. 323 / 2015 by order dated 18.01.2016 while holding that the procedure followed by the respondents in computing delay payment charges is in order and acceptable, directed the respondents to ensure that no delay payment charges are claimed on the FSA and the amount kept aside for Court cases; and further directed to settle the excess claim of delay payment surcharge of Rs. 50,10,350/- or if any by the respondents as mentioned by the complainant by implementing the orders of High Court, Ombudsman, TSERC and CGRF-II in respect of cross subsidy surcharge, R & C, open access demand and voltage surcharge respectively.
- n. It is stated that the petitioner filed C. G. No. 648 / 2015-16 praying the CGRF-II to set aside claim of Rs. 1,92,07,202/- due as on 07.01.2016 vide letter No. CGM (Comml.) / SE (C) / DE (C) / ADE-III / F. Inst / D. No. 2652 / 15 dated 28.01.2015; to issue revised bills from September 2012 billing month onwards as per the orders of V.O., TSERC and CGRF-II in C. G. No. 323 of 2015; and declare the disconnection dated 23.01.2016 as illegal and not to disconnect power supply without following section 56 (1) of Act, 2003.
- o. It is stated that the CGRF-II in C. G. No. 648 / 2015-16 by order dated 23.02.2016 while holding that the respondents have not implemented the order of TSERC, V.O. and CGRF-II in full shape or part on various issues; respondents have not submitted any clarity in arriving the dues which are said to be Rs. 1.92 crore; and that respondents can only arrive the dues to be paid by the complainant by implementing the above four orders in full shape and issue clear notice to the consumer, directed the respondents to go for further disconnection only after implementation of the orders in full shape.

- p. It is stated that a perusal of the order in C. G. No. 648 / 2015-16 dated 23.02.2016 indicates that the petitioner complained that as per orders in C. G. No. 323 of 2015 and Appeal No. 154 of 2013 and order in W. P. No. 16367 of 2015 dated 07.07.2015 the respondents have to revise the CC charges bill and R & C period that is from September 2012 to August 2013.
- q. It is stated that in view of the implementation of order in Appeal No. 154 of 2013 pursuant to the direction of Hon'ble High Court in W. P. No. 16367 of 2015 and the direction of V.O. in C. M. P. No. 01 of 2016 dated 04.07.2016 by reworking the off-peak penal consumption charges for the month of November 2012 duly taking 00.00 hrs as the starting period for computing the entitlements and penalties and not 06.00 hrs as was done by the respondents which resulted in revision of bills for the subsequent periods and thereby arrived to an amount of Rs.73,42,055/- towards R&C bills after withdrawing 10% demand charges as directed by V.O. The respondents have to pay an amount of Rs.6,00,000/- towards penalty imposed by V.O. in C. M. P. No. 01 of 2016 dated 04.07.2016 as per orders. After deducting the amount of Rs. 6,00,000/- from Rs. 73,42,055/-, petitioner has to pay Rs. 67,42,055/-.
- r. It is stated that it thus becomes very much clear that the respondents have implemented the order of Vidyuth Ombudsman in Appeal No. 154 of 2013 and CGRF-II in C. G. No. 323 of 2015 and C. G. No. 648 / 2015-16 and as a result of which the petitioner is liable to pay an amount of Rs. 67,42,055/-.
- s. It is stated that the contention raised by the petitioner in its written submissions and oral submissions that V.O. directed to correct the anomaly in regard to the effect of R & C from 00.00 hrs but not 06.00 hrs as was taken by the respondents, but not direct to revise the total bills for R & C period, is due to misinterpretation and due to picking up of a part of the order and hence untenable.
- t. It is stated that V.O. in para 30 (c) has categorically held that if the reworking of the off-peak penal consumption charges for the month of November 2012 duly taking 00.00 hrs as the starting period for computing the entitlements results in revision of bills for the subsequent

periods, it shall be carried out accordingly. The crucial sentence in the order reads thus -

“if this results in revision of bills for the subsequent period it shall be carried out accordingly.”

- u. It is stated that therefore it becomes very much clear that it is not the respondents who misinterpreted the order, but it is the petitioner who misinterpreted the same.
- v. It is stated that the contention of the petitioner that the respondents with malafide intention have mischievously miscalculated erroneously interpreting the observation of the order of V.O. in order to circumvent the present proceedings is absolutely false, baseless, fictitious and highly objectionable. There is absolutely no necessity for the respondents to misinterpret the order and miscalculate, but it is the petitioner who has been dodging the matter years together with a malafide intention to cause loss to the respondents and to gain wrongfully.
- w. It is stated that the petitioner has been filing cases against the respondents one after the other to avoid payment of statutory dues. Therefore, the petitioner has to be penalised by awarding compensatory cost.
- x. It is stated that the respondents have implemented the orders of CGRF-II and V.O. in letter and spirit and there remains nothing to be implemented. It is stated that that the respondents have reworked the R & C bills and after making all adjustments and entries, the final figure arrived at and to be paid by the petitioner was informed to the petitioner by this respondent vide letter dated 17.08.2016. It is denied that the respondents have misinterpreted the orders of the CGRG 2 and V.O. It is denied that an amount of Rs. 2,09,25,068/- has to be given credit to the account of the petitioner. By no stretch of imagination, the petitioner is entitled for such huge amount which might have been perhaps arrived at by the petitioner by imagination. The petitioner has filed writ petition in W. P. No. 7334 of 2016 on the file of the Hon'ble High Court which is pending adjudication and the claim of the petitioner is subject to the outcome of the said writ petition.

y. It is stated that the petitioner along with its written submissions has placed reliance on several judgments. The judgments relied on by the petitioner are not at all applicable to the facts and circumstances of the case. -

- i) Syed Fazal Mohammad Vs. State through Principal Secretary Finance Deptt Lko & Ors (High Court of Allahabad, relates to promotion, wherein the petitioner challenged the order of state government whereby the claim of the petitioner for his promotion to the post of Joint Director has been rejected.
- ii) Shree Narayana Mahto Vs. The State of Bihar & Ors, wherein the High Court of Patna held that state cannot draw advantage of its own wrong and a citizen cannot suffer on that count. The facts and circumstances of this decision are no way connected to the facts of the present case and hence this decision is not applicable to the present case.
- iii) M. A. Joy S/o. Mathew Vs. Sub Registrar, Edappally, wherein the High Court of Kerala at Ernakullam held that the first respondent refused registration of a document misinterpreting the statutory provision. This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
- iv) Hindustan Composites Ltd., Vs. Jasbir Singh Randhawa and another relates to Contempt of Court, wherein the point for consideration before the Hon'ble High Court of Bombay was whether the disobedience is wilful or deliberate. This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
- v) M. Hussain and Etc Vs. Bharathiyar University, Coimbatore & others is in regard to the principle of estoppel (Section 115 of Evidence Act 1872). This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
- vi) The sixth decision relied on by the petitioner viz., Laxmi Narayan Verma Vs. South Eastern Coalfield Ltd & Ors is also in regard to

the principle of estoppel (Section 115 of Evidence Act 1872). This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.

- vii) *Asiad Village Society Vs. Anil Kumar* relates to contempt of court, wherein the High Court of Delhi held that, it all depends up on the facts and circumstances of each case whether the defence of understanding of a court order put up by the condemner pointed out to his deliberate attempt to disregard the order or whether his understanding was bona-fide and genuine. This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
 - viii) *Haryana Financial Corporation Vs. Jagdamba Oil Mills* relates to a Civil dispute of permanent injunction, wherein the Hon'ble Supreme Court held that courts should not place reliance on decisions without discussing as to how the factual situation fits in the fact situation of the decision on which reliance is placed. It was further held that observations of Court are not to be read as Euclid's theorems nor as provisions of the Statute. These observations must be read in the context in which they appear. This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
 - ix) *Babubhai I Bhill Vs. Chief Postmaster General* relates to transfer and posting. This decision is also no way connected to the facts of the present case and hence this decision is not applicable to the present case.
- z. It is stated that it is not known as to why the petitioner placed reliance on the aforementioned judgments which are not at all related to or connected to the matter in issue in the present case. Therefore, it becomes clear that the only intention of the petitioner is to confuse, mislead and waste the precious time of the Commission by placing reliance on the judgments which do not have any bearing over the matter in issue.
- aa. It is stated that the viewed from any angle, there are no merits or bonafide in the present O. P.

9. The point for consideration is whether the petitioner is entitled to the relief as prayed for?

10. The petitioner had a series of litigation wherein it succeeded in getting the relief to the extent it is feasible. But it is noticed that the pleadings itself reflect that the petitioner itself had approached the Hon'ble High Court in W. P. No. 16367 of 2015 seeking directions for implementation of the orders passed by V.O. as well as CGRF. The said writ petition was disposed of by the Hon'ble High Court on 07.07.2015. It was observed as below.

“When the said order is not implemented in spite of several representations by the petitioner including the representation dated 09.11.2014, the present writ petition is filed.

This Court adjourned the matter from 10.06.2015 thrice, and in spite of the same, the respondents did not choose to give necessary instructions to the learned Standing Counsel.

In the circumstances, respondent Nos. 2 to 5 are directed to implement the order of respondent No. 1 in Appeal No. 154 of 2013 dated 27.10.2014 and pass necessary orders after reworking the bills. The entire exercise shall be completed within a period of 30 days from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in this writ petition, shall stand closed.”

11. Subsequently, this petitioner had filed W. P. No. 7334 of 2016 seeking the following prayer.

“to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus directing the respondents 1 to 4 to implement the order of the 4th respondent vide appeal No. 154 of 2013 dated 27.10.2014 orders of the 6th respondent in C. G. No. 286 of 2015 dated 26.10.2015 C. G. No. 323 of 2015 dated 18.01.2016 and 648 of 2015-16 dated 23.02.2016.”

12. It is noticed that the orders which are sought to be enforced in the said writ petition and this proceedings before the Commission are one and the same except for one order in C. G. No. 648 of 2015.

13. When the writ petition relating to implementation of the order of the CGRF-II and V.O. is pending consideration before the Hon'ble High Court, it is not appropriate for this Commission to undertake proceedings on the self same relief may be in a circuitous manner of punishing the DISCOM. This Commission would be overstepping its authority if it were to initiate action against the respondents as sought by the petitioner, since the superior forum has entertained writ proceedings on the same subject albeit limited to implementation only and not punishing the licensee. The present petition would run the other way of securing implementation through punishing the licensee under the provisions of the Act, 2003 and would amount to denigrating the propriety of the superior forum to adjudicate on the issue.

14. The Commission would emphasize that the licensee is bound to implement the orders of the CGRF-II and V.O., at the same time the petitioner could not have placed his steps in two fora trying to secure the relief by initiating proceedings in the guise of non-compliance of orders of other authorities before the Commission by requiring the Commission to hand down punishment for non-compliance of the orders of CGRF-II and V.O. as also initiating proceedings before the Hon'ble High Court to secure compliance of the same. This attitude of the petitioner constitutes the action of invoking several remedies fraudulently. It also constitutes approaching the Commission as well as Hon'ble High Court with unclean hands.

15. Therefore, the Commission is constrained not to entertain this petition and decide whether the licensee had, in fact, indulged in violation of the Act, 2003 by not complying with the orders of the CGRF-II and V.O. Suffice it to state that despite knowing the fact that a writ petition was already filed on 03.03.2016 which is much prior to the filing of this petition before this Commission on 28.08.2016. The petitioner conveniently suppressed the fact. Inasmuch as representation has been made that the respondents have approached the Hon'ble High Court, which is factually incorrect.

16. The petitioner has relied on several judgments covering different aspects, which are unrelated to the subject matter. The judgments cited by the petitioner are part of

and having been enclosed to the written submissions. The propositions set out therein do not influence or aid the contentions raised in the subject of the petition. None of the judgments neither relate to substantial issue of the electricity nor procedure involved in the electricity rules. They are not applicable to the facts and circumstances of the case. Suffice it to state that the Commission is not required to elucidate on the contentions raised basing on the above said judgments in view of the observations made in the preceding paragraphs. The judgments referred to by the petitioners are therefore not considered for the decision in the matter.

17. In these circumstances and for the foregoing discussion, the Commission, without dwelling into the factual matrix of the matter, is inclined to dismiss the petition. Accordingly, the original petition stands dismissed, but in the circumstances without costs. Consequently, the interlocutory application also stands dismissed.

This order is corrected and signed on this the 18th day of October, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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